HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

A.O. No. 778 of 2001

Jagdish Lal Sah Gangola

Vs

State of U.P. & another

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 10.8.2004.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 778 of 2001
(Old No. 891 of 1984)

Jagdish Lal Sah Gangola ..... Appellant

Versus

State of U.P. & another ..... Respondents

Dated: 10.8.2004

Hon. Rajesh Tandon J.

The file has been transferred from Allahabad High Court. None appears for the appellant.

I have heard the learned Standing Counsel for the respondents and have gone through the record.

Present appeal has been filed against the judgment and order dated 10.8.1984 passed by the District Judge, Almora in Civil Appeal No. 32 of 1983.

Briefly stated the facts giving rise to the present appeal are that plaintiff Jagdish Lal shah Gangola filed a suit against the respondents in the Court of Civil Judge, Almora for a decree directing the defendants to demolish the motor road known as Kaparkhan-Binsar Road over the entire plot no.1 and 3 and portions of plots no. 2, 4, 6 and 8 and restore the plots to their original positions and hand over the possession of the said plots to the plaintiff and also directing the defendants to pay to the plaintiff Rs. 6300/- being the amount of actual damage caused by the defendant no.2 to the plaintiff. The plaintiff claims

himself to be the owner of check no.2 in village Binsar Estate, Patti Malla Syunera, Tehsil Ranikhet including the recent settlement plots no. 1,2, 3, 4, 6 and 8. The defendants have encroached upon the entire settlement plots no. 1 and 3 and portion of plots no. 4, 6, and 8 without the consent of the plaintiff.

The defendants filed written statement and contested the suit on various grounds besides denying the title and possession of the plaintiff on plots no. 1,2, 3, 4, 6 and 8. The defendants specifically pleaded that on a portion of plots no.1, 3 and 8 over which the defendant no.1 has erected the motor road were never in possession and ownership of the plaintiff but the suit land is protected land of the Forest Department. The learned Civil Judge framed as many as 10 issues in the suit. The trial court also issued a survey commission who submitted its report. After recording the evidence of the parties and hearing the parties, the learned Civil Judge partly decreed the suit of the plaintiff.

Aggrieved against the judgment and decree defendants filed appeal before the District Judge, Almora, which was registered as Civil Appeal No. 32 of 1983. The learned District Judge after hearing the parties allowed the appeal and remanded the case to the trial Court for afresh decision after issuing a fresh commission of survey, measurements and location of the land in dispute. Being aggrieved the present appeal has been preferred by the plaintiff appellant before this Court.

The learned District Judge after hearing the parties passed detailed order in the appeal and has remanded back the case to the trial Court for afresh decision after conducting

proper survey of the land in dispute. The District Judge has also pointed out the manner of survey to be conducted for locating the land in dispute. Since it is a remand order, therefore, I do not think it proper to interfere in the order passed by the lower appellate court. I find no illegality or infirmity in the order passed by the lower appellate Court. The appeal lacks merit and is hereby dismissed.

No order as to costs.

(Rajesh Tandon J.)

10.8.2004
*Dhyani